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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,012	01/22/2004	Maurice Martin	IRL001C1	6248
20995 7590 04/30/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER KENDALL, CHUCK O				
ART UNIT 2192		PAPER NUMBER		
NOTIFICATION DATE 04/30/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

### Office Action Summary

**Application No.**

10/763,012

**Applicant(s)**

MARTIN ET AL.

**Examiner**

CHUCK O. KENDALL

**Art Unit**

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. Based on Appellant's arguments in his brief filed 02/24/09.
2. Claims 1 – 52 are still pending.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619

(CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 14, 27 and 40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 10, 19, 43, 68, 93, 96 and 98 of U.S. co pending Application 10/484541. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims appear to be an obvious modification of the instant claimed invention and recite similar limitations regarding interactively modifying a simulated environment by multiple users.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 – 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tenney et al. US 6,944,584 B1 in view Martin et al. 20040216044.

Regarding claims 1, 14, 27 and 40, Tenney discloses method/system/computer program of cooperatively programming for a simulation of a computer application to be developed, the method comprising:

communicating with a plurality of user computers, where the user computers display an executable simulation model of the simulation program of the computer application to be developed (FIG. 1, 121, 123, and

125 also see all associated text for displaying simulation model see 2:35 – 40);

receiving a modification to the executable simulation model from a first user computer selected from the user computers (2:35 – 45); and automatically providing an update to the plurality of user computers such that the plurality of user computers display the revised executable simulation model (7:35 – 50).

Tenney doesn't expressly disclose permitting the user computers to simultaneously modify the executable simulation model thereby revising the simulation program of the computer application to be developed.

However, Martin in an analogous art and similar configuration discloses being able to add or modify interactive content between different users, setting attributes wherein the user can define the appearance and behavior in a collaborative environment [00038]

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Tenney and Martin, because it would enable collaboration among other users and the ability to remotely modify shared information.

Regarding claims 2, 15, 28 and 41, the method as defined in claim 1, wherein the modification to the executable simulation model further comprises at least one of adding a primitive, deleting a primitive, editing a primitive, and modifying a relationship between or among primitives (Tenny, 7:45 – 50, see view, edit and develop control programs).

Regarding claims 3,16, 29 and 42,the method as defined in claim 1, further comprising automatically providing the update in near real time (7:47 – 50, see live updates).

Regarding claims 4,17, 30 and 43, the method as defined in claim 1, wherein automatically providing an update occurs without having a user of the first user computer activate an instruction to update the executable simulation mode (7:40 – 45, see dynamically updated).

Regarding claims 5,18, 31 and 44, the method as defined in claim 1, wherein automatically providing an update further comprises automatically updating a second user computer without receiving a request from the second user computer to update the executable simulation model (7:40 – 45, see dynamically updated).

Regarding claim 6, 19, 32 and 45, the method as defined in claim 1, further comprising dynamically sharing requirements among the user computers (6:22 – 40).

Regarding claim 7, 20, 33 and 46, the method as defined in claim 1, further comprising dynamically sharing requirements among the user computers, wherein the dynamically-shared requirements are stored in a single data store (6:22 – 40).

Regarding claims 8,21, 34 and 47, the method as defined in claim 1, wherein the executable model includes requirements (10:50 – 55).

Regarding claims 9, 22, 35 and 48, the method as defined in claim 1, further comprising dynamically sharing primitives among the user computers (6:22 – 40).

Regarding claims 10, 23, 36 and 49, the method as defined in claim 1, further comprising dynamically sharing primitives among the user computers, wherein the dynamically-shared primitives are stored in a single data store (FIG. 1,119 and all associated text).



Regarding claims 11, 24, 37 and 50, the method as defined in claim 1, further comprising: communicating with a second user computer, where the second user computer is executing the model of the simulation; and automatically providing the update to the second user computer such that the second user computer automatically executes the revised executable model of the simulation (8:58 – 65).

Regarding claims 12, 25, 38 and 51, the method as defined in claim 11, wherein automatically providing the update to the second user computer occurs in near real time (7:45 – 50, see live updates).

Regarding claims 13, 26, 39 and 52, the method as defined in claim 1, wherein the computer application is a Web-based application (FIG. 1, 121 see web browser).

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1 – 52 have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Kendall whose telephone number is 571-272-3698. The examiner can normally be reached on 10:00 am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on 571-272-3695. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Chuck O Kendall/

Primary Examiner, Art Unit 2192

